

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

In Re:
Barry Oneil Graves

Case No. 17-10274
Chapter 13

Social Security No. xxx-xx-0687
Address: P.O. Box 1314, Mebane, NC 27302

Debtor

OBJECTION TO CLAIM

NOW COMES the Debtor above-named, through counsel, pursuant to 11 U.S.C. §502, Bankruptcy Rule 3007, and N.C. Gen Stat. § 45-91, who respectfully objects to the Proof of Claim filed by the creditor BANK OF AMERICA, N.A. and dated July 21, 2017, for the following reasons:

1. The Bank Of America, N.A. is a servicer of a home loan for the purposes of N.C. Gen Stat. § 45-90(1), and is therefore subject to the notice requirements of N.C. Gen Stat. § 45-90.
2. The Proof of Claim was filed by Bank Of America, N.A. on behalf of Shellpoint Mortgage Servcing, the alleged holder of home loan referenced in the Proof of Claim.
3. The Proof of Claim asserts that Bank Of America, N.A. is entitled to fees totaling \$2,187.15, for the following described expenses:
 - a. Appraisal: \$550.00, incurred on September 13, 2016, or 311 days prior to the filing of the Proof of Claim.
 - b. Attorney Fees: \$647.50, incurred most recently on February 21, 2017, or 150 days prior to the filing of the Proof of Claim.
 - c. Certified Mail Fees: \$51.93, incurred most recently on March 3, 2017, or 140 days prior to the filing of the Proof of Claim.
 - d. FC Costs: \$60.00, incurred on January 30, 2017, or 172 days prior to the filing of the Proof of Claim.
 - e. Late Fee : \$26.72, incurred most recently on June 17, 2017, or 34 days prior to the filing of the Proof of Claim.
 - f. Property Inspection : \$91.00, incurred most recently on February 24, 2017, or 147 days prior to the filing of the Proof of Claim.
 - g. Property pres: \$109.50, incurred most recently on March 17, 2016, or 491 days prior to the filing of the Proof of Claim.
 - h. Recording Costs: \$30.50, incurred on January 30, 2017, or 172 days prior to the filing of

the Proof of Claim.

- i. Securing Fees: \$195.00, incurred most recently on April 13, 2016, or 464 days prior to the filing of the Proof of Claim.
 - j. Title Cost : \$375.00, incurred most recently on January 30, 2017, or 172 days prior to the filing of the Proof of Claim.
 - k. Winterization: \$50.00, incurred on February 29, 2016, or 508 days prior to the filing of the Proof of Claim.
4. Pursuant to N.C. Gen Stat. § 45-91, for a fee to be allowed, Bank Of America, N.A. must assess the fee within 45 days from the date which the fee was incurred, and must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address within 30 days after assessing the fee.
 5. The Proof of Claim filed by Bank Of America, N.A. does not specify when the fees were assessed.
 6. The Proof of Claim filed by Bank Of America, N.A. does not include a copy of the explanatory statement mailed to the Debtor at the Debtor's last known address.
 7. Furthermore, the filing of a Proof of Claim with a bankruptcy court does not satisfy the requirements of N.C. Gen Stat. § 45-91(1). *In re Saeed*, Bankr. No. 10-10303, (Bankr. M.D.N.C., Sept 17, 2010) (2010 WL 3745641)(2010 Bankr.LEXIS 3267); *In re Smith*, Bankr. No. 08-07636-8-JRL,(Bankr. E.D.N.C. Nov. 8, 2012).
 8. The failure by Bank Of America, N.A. to provide notice of the fees charged, as required by N.C. Gen Stat. § 45-91, constitutes a waiver of said fees pursuant to N.C. Gen Stat. § 45-91(3). See *In re Saeed*, Bankr. No. 10-10303 (Bankr. M.D.N.C., Sept 17, 2010) (2010 WL 3745641). See also *In re Obie*, Bankr. No. 09-80794, (Bankr. M.D.N.C.,Nov. 24, 2009) (2009 WL 4113587)(2009 Bankr. LEXIS 3858). See also *In re: Hillmon*, Bankr. No. 11-80303 (Bankr. M.D.N.C., Oct. 26, 2011)(2011 Bankr. LEXIS 5536). See also *In re Smith*, Bankr. No. 08-07636-8-JRL,(Bankr. E.D.N.C. Nov. 8, 2012).
 9. Because the Debtor contests the amount of the pre-petition arrearage claimed by said creditor in its Proof of Claim filed in this case, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Debtor is, by separate document attached herewith, requesting production from Bank Of America, N.A. of a payment history and related information.
 10. This motion shall serve as 30 days notice, pursuant to N.C.G.S. § 45-94 of the alleged violations hereinbefore referenced, which notice is a condition precedent to the filing of a motion by the Debtor to recover actual damages caused by said violations, including reasonable attorney fees of at least \$250.00.

WHEREFORE, the Debtor prays that the Court enter an Order as follows:

1. Finding that Bank Of America, N.A., in violation of N.C.G.S. § 45-91, failed to provide timely, clear and conspicuous notification to the Debtor of the assessment of the aforementioned fees,

in the amount of \$2,187.15.

2. Finding that such failure by Bank Of America, N.A. constitutes a waiver of such fees.
3. Disallowing the aforementioned fees in the amount of \$2,187.15 and reducing the pre-petition claim of the Bank Of America, N.A. accordingly.
4. Prohibiting Bank Of America, N.A. from later assessing these fees to the Debtor's mortgage account.
5. In the event that Bank Of America, N.A. contests this objection by filing a formal response thereto, the Debtor requests that, until such time as the aforementioned payment history and related information is provided, the Court treat any hearing upon this Objection as preliminary, in accordance with the power vested in this Court pursuant to 11 U.S.C. 105(a).
6. Awarding counsel undersigned an attorney fee of at least \$250.00, to be paid as an administrative claim by the Chapter 13 Trustee, with the pre-petition claim of Bank Of America, N.A. reduced by this additional amount.
7. Granting any other relief the Court deems just and proper.

Dated: October 17, 2017

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
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Debtor

CERTIFICATE OF SERVICE

I, Lisa Humphrey, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on October 17, 2017, I served copies of the foregoing **OBJECTION TO CLAIM** electronically or, when unable, by regular first-class U.S. mail, addressed to the following parties:

BANK OF AMERICA, N.A.

Attn: Officer

Shellpoint Mortgage Servicing

P.O. Box 10826

Greenville, SC 29603-0826

U.S. Bankruptcy Administrator

Anita Jo Kinlaw-Troxler

Chapter 13 Trustee

/s Lisa Humphrey

Lisa Humphrey